MONTANA LEGISLATIVE HISTORY

Chapter 326 19 1997

Bill H _____ S 16 Original bill & history 1 C

H. Committee on Judiciary

Hearing Date(s) 3/6 ___C

_____ ___C

_____ ___C

_____ ___C

Date Out _____ ___C

S. Committee on Judiciary

Hearing Date(s) 1/8 ___C

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_____ ___C

_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

RETURNED TO SENATE
3/18 SIGNED BY PRESIDENT
3/21 SIGNED BY SPEAKER
3/21 TRANSMITTED TO GOVERNOR
3/26 SIGNED BY GOVERNOR
CHAPTER NUMBER 157
EFFECTIVE DATE: 07/01/97

SB 16 INTRODUCED BY HALLIGAN *LC0369 DRAFTER: LANE*

REQUIRE MANDATORY DISCLOSURE BETWEEN PARTIES OF ALL ASSETS AND LIABILITIES SUBJECT TO EQUITABLE DIVISION OF THE MARITAL ESTATE IN CASES OF MARRIAGE DISSOLUTION OR NULLITY OR LEGAL SEPARATION

12/16	INTRODUCED		
12/27	REFERRED TO JUDICIARY		
1/06	FIRST READING		
1/08	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED		
1/17	2ND READING PASSED	44	4
1/18	3RD READING PASSED	41	0
	TRANSMITTED TO HOUSE		
1/20	FIRST READING		
1/20	REFERRED TO JUDICIARY		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED AS AMENDED	68	27
4/05	3RD READING CONCURRED	77	21
	RETURNED TO SENATE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	50	0
4/10	3RD READING CONCURRED AS AMENDED	49	1
4/15	SIGNED BY PRESIDENT		
4/16	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 326		
	EFFECTIVE DATE: 10/01/97		

SB 17 INTRODUCED BY WATERMAN *LC0372 DRAFTER: CAMPBELL*

CREATE A SENIOR INSURANCE AND A SENIOR SECURITIES FRAUD EDUCATION AND PREVENTION PROGRAM

BY REQUEST OF STATE AUDITOR

12/16	INTRODUCED
12/20	FISCAL NOTE REQUESTED
12/27	REFERRED TO BUSINESS & INDUSTRY
1/06	FIRST READING
1/09	FISCAL NOTE RECEIVED
1/10	HEARING
1/10	FISCAL NOTE PRINTED
1/22	TABLED IN COMMITTEE
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
	DIED IN COMMITTEE

SB 18 INTRODUCED BY HALLIGAN *LC0499 DRAFTER: PETESCI*

CLARIFY THE AUTHORITY OF THE LEGISLATIVE BRANCH TO ESTABLISI CERTAIN LEAVE AND OVERTIME PROVISIONS FOR LEGISLATIVI EMPLOYEES

BY REQUEST OF LEGISLATIVE COUNCIL

12/16	INTRODUCED		
12/20	FISCAL NOTE REQUESTED		
12/27	REFERRED TO STATE ADMINISTRATION		
1/06	FIRST READING		
1/07	HEARING		
1/07	FISCAL NOTE RECEIVED		
1/08	FISCAL NOTE PRINTED		
1/08	COMMITTEE REPORT—BILL PASSED		
1/09	2ND READING PASSED	46	
1/10	3RD READING PASSED	46	
	TRANSMITTED TO HOUSE		
1/11	FIRST READING		
1/11	REFERRED TO BUSINESS & LABOR		
1/17	HEARING		
1/18	COMMITTEE REPORT—BILL CONCURRED		
1/20	2ND READING CONCURRED	90	
1/21	3RD READING CONCURRED	91	
	RETURNED TO SENATE		
1/22	SIGNED BY PRESIDENT		
1/22	SIGNED BY SPEAKER		
1/23	TRANSMITTED TO GOVERNOR		
1/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 2		
	EFFECTIVE DATE: 01/27/97		

SB 19 INTRODUCED BY GAGE *LC0104 DRAFTER: HEIMA*

REVISE STATE BUDGETING LAWS

BY REQUEST OF JOINT INTERIM SUBCOMMITTEE ON STAT MANAGEMENT SYSTEMS

12/16	INTRODUCED	
12/27	REFERRED TO STATE ADMINISTRATION	
1/06	FIRST READING	
1/07	HEARING	
1/17	COMMITTEE REPORT—BILL PASSED AS AMENDED	
1/20	2ND READING DO PASS MOTION FAILED	24
1/20	SEGREGATED FROM COMMITTEE OF WHOLE REPORT	
1/20	REREFERRED TO FINANCE & CLAIMS	
1/28	FISCAL NOTE REQUESTED	
1/29	FISCAL NOTE RECEIVED	
1/29	FISCAL NOTE PRINTED	
1/30	HEARING	
1/31	COMMITTEE REPORT—BILL PASSED AS AMENDED	
2/05	2ND READING PASSED	50
2/06	3RD READING PASSED	49
	TRANSMITTED TO HOUSE	
2/07	FIRST READING	
2/07	REFERRED TO APPROPRIATIONS	
3/14	HEARING	
4/03	COMMITTEE REPORT—BILL CONCURRED AS AMENDED	
4/07	2ND READING CONCURRED	97
4/07	3RD READING CONCURRED	96

SENATE BILL NO. 16

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING MANDATORY DISCLOSURE BETWEEN PARTIES OF ALL ASSETS AND LIABILITIES SUBJECT TO EQUITABLE DIVISION OF THE MARITAL ESTATE IN CASES OF MARRIAGE DISSOLUTION OR NULLITY OR LEGAL SEPARATION; PROVIDING PENALTIES FOR FAILURE TO COMPLY; AMENDING SECTIONS 40-4-201 AND 40-4-208, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, it is the policy of the State of Montana to:

(1) marshal, preserve, and protect marital estate assets and liabilities that exist at the date of separation in order to avoid dissipations of the marital estate before distribution;

(2) ensure fair and sufficient child and spousal support awards; and

(3) achieve an equitable division of marital estate assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties, as provided under Montana law; and

WHEREAS, sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery; and

WHEREAS, in order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as joint or separate, together with a disclosure of all income and expenses of the parties; and

WHEREAS, each party has a continuing duty to update and augment material changes to that disclosure so that at the time that the parties enter into an agreement for the resolution of any of these issues or at the time of trial on these issues, each party will have as full and complete knowledge of the relevant underlying facts as is reasonably possible under the circumstances of the case without the need of formal discovery requests pursuant to the Montana Rules of Civil Procedure.

THEREFORE, the Legislature of the State of Montana finds it appropriate to enact the following provisions relating to disclosure of marital estate assets and liabilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Asset" includes but is not limited to any real or personal property of any nature however and whenever acquired, whether the property is tangible or intangible, whether the property is currently existing or contingent, and whether the title is in the name of the husband or wife, or both.

(2) "Default judgment" does not include a stipulated judgment or any judgment pursuant to a marital settlement agreement.

(3) "Earnings and accumulations" includes income from any source.

(4) "Expenses" includes but is not limited to all personal living expenses, but does not include business-related expenses.

(5) "Liability" includes but is not limited to any debt or obligation, however and whenever acquired, whether the debt or obligation is currently existing or contingent or is in the name of the husband or wife, or both.

(6) "Marital estate" includes all assets and liabilities.

NEW SECTION. **Section 2. Preliminary declaration of disclosure -- penalty.** (1) Within 60 days of service of a petition for dissolution or nullity of marriage or for legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury. The parties may, by written stipulation or by oral stipulation made in open court, agree to change the time for exchange of preliminary declarations of disclosure.

(2) The preliminary declaration of disclosure may not be filed with the court, except on the court's order.

(3) The preliminary declaration of disclosure must set forth with sufficient particularity, which a person of reasonable and ordinary intelligence can ascertain, all of the following:

(a) the identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of an asset or liability; and

(b) the declarant's percentage of ownership in each asset and percentage of obligation for each liability when property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(4) A declarant may amend the declarant's preliminary declaration of disclosure without permission

of the court.

(5) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

(6) In addition to any other civil or criminal remedy available under law for the commission of perjury, the court may set aside the judgment, or part of the judgment, if the court discovers that a party has committed perjury in the preliminary declaration of disclosure.

NEW SECTION. **Section 3. Final declaration of disclosure -- failure to disclose current income and expense declaration -- penalty.** (1) (a) Each party shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury:

(i) before or at the time that the parties enter into an agreement for the resolution of property or support issues, other than pendente lite support; or

(ii) in the event that the case goes to trial, no later than 45 days before the first assigned trial date.

(b) The parties may, by written stipulation or by oral stipulation made in open court, agree to change the time for exchange of final declarations of disclosure.

(2) The final declaration of disclosure must include all material facts and information regarding the:

(a) characterization of all assets and liabilities;

(b) valuation of all assets that are contended to be marital or for which it is contended that the marital estate has an interest;

(c) amounts of all obligations that are contended to be marital obligations or for which it is contended that the marital estate has liability; and

(d) expenses and earnings and accumulations of each party that have been set forth in the income and expense declaration.

(3) Along with the final declaration of disclosure, each party shall serve on the other party an updated income and expense declaration unless a current income and expense declaration is on file.

(4) The failure of a party to disclose an asset or liability on the final declaration of disclosure is presumed to be grounds for the court, without taking into account the equitable division of the marital estate, to award the undisclosed asset to the opposing party or the undisclosed liability to the noncomplying party.

(5) In addition to any other civil or criminal remedy available under law for the commission of perjury, the court may set aside the judgment, or part of the judgment, if the court discovers, within 5 years from the date of entry of judgment, that a party has committed perjury in the final declaration of disclosure.

NEW SECTION. **Section 4. Execution and service of final declaration of disclosure and current income and expense declaration.** Absent good cause, the court may not enter a judgment with respect to the parties' property rights unless each party has executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party.

NEW SECTION. **Section 5. Noncomplying declarations -- requests to comply -- remedies.** (1) A party who has served on the other party a preliminary declaration of disclosure under [section 2] or a final declaration of disclosure under [section 3] and who has provided the information required in the declarations with sufficient particularity may, within a reasonable time, request from a noncomplying party preparation of the appropriate declaration of disclosure or further particularity in a declaration.

(2) If a noncomplying party fails to comply with a request under subsection (1), the complying party may file either or both of the following:

(a) a motion to compel a further response;

(b) a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(3) If a party fails to comply with any provision of [sections 1 through 8], the court shall, in addition to any other remedy provided by law, order the noncomplying party to pay to the complying party any reasonable attorney fees or costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

NEW SECTION. **Section 6. Liquidation -- transfer of marital estate assets to avoid encumbrance, devaluation, or market or investment risk -- authority of court.** (1) Except as provided in subsection (2), at any time during the proceedings, the court may, upon application of a party and for good cause and after

consideration of the relative nature, scope, and extent of the marital estate, order the liquidation or transfer of title of marital estate assets to avoid unreasonable encumbrance, devaluation, or market or investment risk.

(2) The court may not grant an application under subsection (1) unless the appropriate declaration of disclosure has been served on the opposing party by the moving party as provided in [sections 2 through 4].

NEW SECTION. **Section 7. Default judgments -- disclosures.** In the case of a default judgment, a petitioner may waive the final disclosure requirements of [sections 3 and 4]. However, the petitioner shall comply with the preliminary declaration of disclosure requirements of [section 2].

NEW SECTION. **Section 8. Attorney work product privilege -- protective orders -- Montana Rules of Civil Procedure.** A disclosure required by [sections 2 through 4] does not abrogate the attorney work product privilege or the formal discovery procedures provided by the Montana Rules of Civil Procedure or does not impede the power of the court to issue protective orders.

Section 9. Section 40-4-201, MCA, is amended to read:

"**40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) ~~In~~ Subject to subsection (7), in a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of

property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms ~~shall~~ must be set forth in the decree of dissolution or legal separation and the parties ~~shall~~ must be ordered to perform them; or

(b) if the separation agreement provides that its terms ~~shall~~ may not be set forth in the decree, the decree ~~shall~~ must identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except as provided in subsection (7) and except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

(7) The decree may be modified, as provided in [sections 1 through 8], for failure to disclose assets and liabilities."

Section 10. Section 40-4-208, MCA, is amended to read:

"**40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) ~~Whenever~~ Except as provided in [sections 1 through 8], whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) ~~Whenever~~ Except as provided in [sections 1 through 8], whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

(iii) upon application by the department of public health and human services, whenever the

department of public health and human services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. ~~A~~ Except as provided in [sections 1 through 8], a modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(c) The nonexistence of a medical support order, as defined in 40-5-804, or a violation of a medical support order justifies an immediate modification of child support in order to:

(i) provide for the actual or anticipated costs of the child's medical care;

(ii) provide or maintain a health benefit plan or individual health insurance coverage for the child; or

(iii) eliminate any credit for a medical support obligation when it has been permitted or used as a credit in the determination of the child support obligation.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Provisions for the support of a child are terminated by emancipation of the child or the child's graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

(6) The decree may be modified, as provided in [sections 1 through 8], for failure to disclose assets and liabilities."

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 8] are intended to be

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 8, 1997, at 10:00 a.m., in the Senate Judiciary Room (325) of the State Capitol.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused:

Sen. Ric Holden (R)
Sen. Steve Doherty (D)

Members Absent: None

Staff Present:

Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 16, January 8, 1997

Executive Action: None

HEARING ON SB 16

Sponsor: **SENATOR MIKE HALLIGAN, SD 34, Missoula.**

Proponents: **Lawrence Scott, Missoula, family law practice**
Kerry Newcomer, Missoula, attorney

Opening Statement by Sponsor: **SENATOR MIKE HALLIGAN, SD 34, Missoula.** SB 16 requires mandatory disclosure of all assets and liabilities 45-60 days prior to first trial setting, and helps the court to make better decisions in divorce cases. Nearly everyone has been touched in some way by divorce, and this

legislation is needed to lend stability to families in this process.

The bill reduces costly discovery fees, is less adversarial, and means less trauma in divorce cases.

Proponents' Testimony: **Lawrence Scott, Missoula family law practice, and member of the State Bar Committee on Family Law.** Practitioners, judges and the public all saw inconsistencies in costs, and decided change was necessary. I endeavored to consider the peoples' agenda in developing this legislation.

Current law allows attorneys to find out necessary information, as long as they know how to ask the right questions. The process is fraught now with attorneys trying to be tricky and objecting to things, then filing motions and putting costs out of sight in the discovery process.

The bill will also be beneficial to attorneys with regard to malpractice insurance. Mandatory disclosure will result in a schedule of only 6 pages versus 45 pages of discovery from 200 questions.

There is a strict provision on non-compliance, whereby a party could lose the asset not disclosed for a period of up to five years. The bill, basically, comes from the State of California, and the Bar Committee was assisted in its research by a judicial student in Reno who checked the laws of each of the states.

Kerry Newcomer, Missoula attorney, practicing in the area of domestic relations. The bill is a good idea because Montana is a common law state and not a community property state. Property listed becomes liened in a divorce case for proper distribution by the court.

Twenty-five percent of divorce costs are in obtaining information, and another twenty-five percent may come from follow-up costs, but that this legislation will not eliminate discovery.

{Tape: 1; Side: A; Approx. Time Count: #17.5; Comments: None}

It is becoming increasingly difficult to discover undisclosed property. I want to remind the Committee that the bill is self-enforcing.

Opponents' Testimony: None

Questions from Committee Members and Responses: **SENATOR SUE BARTLETT.** What will the repercussions be in situations of unintentional failure to disclose hidden assets? **Mr. Scott.** The initial penalty is possible contempt of court, but later on the penalty of loss in the bill could come, based on presumption.

SENATOR BARTLETT. Is there a basic right to argue this point before the judge? **Mr. Scott.** The judge would retain this discretion.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: None}

SENATOR SHARON ESTRADA. Would items such as clothing and jewelry be considered assets? **Mr. Scott.** These are normally called personal effects, and if they are generally of no value, they do not enter into part of the marital estate.

SENATOR LORENTS GROSFIELD. What does the judge do with undisclosed property? **Mr. Scott.** The judge does what he or she deems equitable. The other party would have to make a motion to reopen the case and have an evidentiary hearing. By and large, the bill will be beneficial to the public, but I was very concerned with possible future ramifications as I was researching and preparing this legislation.

SENATOR ESTRADA. Does this information become public record when it is filed? **Mr. Scott.** It does.

SENATOR GROSFIELD. Does anything happen at the end of the five-year period? **Mr. Scott.** No. This time period is a jurisdictional issue.

CHAIRMAN CRIPPEN. Is California a community property state? **Mr. Scott.** It is. **Mr. Newcomer.** California recognizes both community property and common law, depending upon how and when the property is acquired. California has altered its statutes several times since 1979. A party could argue separate contribution of property to bring it into community, but these things usually don't come up in a typical marriage.

CHAIRMAN CRIPPEN. How a lien is removed? **Mr. Newcomer.** It is done by dismissal of the petition or entry of lien.

CHAIRMAN CRIPPEN. Is the lien were recorded? **Mr. Newcomer.** No, it is not.

CHAIRMAN CRIPPEN. Who would have first rights if a mortgage company came along and filed a lien? **Mr. Newcomer.** I believe the marriage would have first rights, and it's discoverable.

CHAIRMAN CRIPPEN. Could the parties waive disclosure? **Mr. Newcomer.** They could, but I do not know why the parties would wish to do so. I believe most would want to disclose significant items up front. Secreted property usually is well-hidden from disclosure.

CHAIRMAN CRIPPEN. What about the material versus the non-material in failure to disclose?. **Mr. Scott.** I removed "material or substantial" from the language of the bill draft, as I felt attorneys would play with it.

{Tape: 1; Side: B; Approx. Time Count: #21.1; Comments: None}

CHAIRMAN CRIPPEN. How would the mental state of the parties affect disclosure? **Mr. Scott.** This has been a factor in cases which were ramrodded through the courts, especially where the wife has been a homemaker and needs to readjust entirely.

{Tape: 2; Side: A; Approx. Time Count: #00; Comments: None}

SENATOR AL BISHOP. Could a meeting not follow property given to the other party in a failure to disclose situation? **Mr. Newcomer.** It could go a number of different ways, as decided upon by the court. **Mr. Scott.** Another option would be to sell the property.

{Tape: 2; Side: A; Approx. Time Count: #2.6; Comments: None}

SENATOR ESTRADA. Will this proposed disclosure make it easier for attorneys to get together and settle cases out of court? **Mr. Scott.** It will.

{Tape: 2; Side: A; Approx. Time Count: #3.7; Comments: None}

SENATOR ESTRADA. Will the bill create a lot of work for private investigators? **Mr. Newcomer.** Right now, unless it is within 180 days of the decree, the other party has no remedy if hidden property is discovered.

{Tape: 2; Side: A; Approx. Time Count: #5.7; Comments: None}

SENATOR ESTRADA. Does the bill represent a major change? **Mr. Scott.** It does.

CHAIRMAN CRIPPEN. Did the drafters encounter any problems with the Montana Judges Association? **Mr. Scott.** The Judges were part of the drafting discussion, but have not yet reviewed the introduced bill.

<u>Closing by Sponsor</u>: **SENATOR HALLIGAN.** SB 16 will touch more citizens than a lot of other legislation this term. It's a 180 degree change, and shifts the responsibility to the parties rather than their attorneys. The bill changes unfair situations between parties when one has great resources and the other has very little.

If passed, the bill would become effective July 1, 1997. Files will be much smaller with mandatory disclosure 44-60 days prior to trial. Senate Bill 16 a serious bill with major implications.

{Tape: 2; Side: A; Approx. Time Count: #10.7; Comments: None}

CHAIRMAN CRIPPEN advised the Committee of his intent to hold Executive Session early the following week for bills heard to date.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 6, 1997, at 8 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:		SB 16, SB 32, SB 33, SB 31 POSTED 2/21/97
Executive Action:		BE CONCURRED IN: SB 16, SB 32, SB 33 BE CONCURRED IN AS AMENDED: SB 54, SB 212 TABLED: SB 44

HEARING ON SB 16

Opening Statement by Sponsor: **SEN. MIKE HALLIGAN**
{Tape: 1; Side: A; Approx. Time Count: 2.0}

Proponents' Testimony:

MARS SCOTT, Attorney
{Tape: 1; Side: A; Approx. Time Count: 5.3}

CORBIN HOWARD, Attorney
{Tape: 1; Side: A; Approx. Time Count: 10.0}

Closing by Sponsor: SEN. HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 12.1}

HEARING ON SB 32

Opening Statement by Sponsor: SEN. MIKE HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 12.7}

Proponents' Testimony:

MARS SCOTT, Attorney
{Tape: 1; Side: A; Approx. Time Count: 15.1}

KERRY NEWCOMER, Attorney
{Tape: 1; Side: A; Approx. Time Count: 16.9}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 19.7 - 27.7}

Closing by Sponsor: SEN. HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 27.8}

HEARING ON SB 33

Opening Statement by Sponsor: SEN. MIKE HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 28.5}

Proponents' Testimony:

CORBIN HOWARD, Attorney
{Tape: 1; Side: A; Approx. Time Count: 31.4}

MARS SCOTT, Attorney
{Tape: 1; Side: A; Approx. Time Count: 33.5}

Closing by Sponsor: SEN. HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 36.0}

EXECUTIVE ACTION ON SB 33

Motion: REP. WYATT moved SB 33 BE CONCURRED IN.
{Tape: 1; Side: A; Approx. Time Count: 38.0}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 38.2-Tape 1; Side B; 8.0}

Vote: The motion carried 14 - 3; REPS. BOHARSKI, MC GEE and CLARK voting no. (REP. AHNER voted aye by proxy; REP. MC GEE voted no by proxy. REPS. SMITH, MOLNAR and KOTTEL were not present for the vote and left no proxy votes.) **REP. ELLINGSON will carry SB 33.**

EXECUTIVE ACTION ON SB 16

Motion/Vote: **REP. ANDERSON moved SB 16 BE CONCURRED IN.** The motion carried 14 - 3; REPS. BOHARSKI, MC GEE and CLARK voting no. (REP. AHNER voted aye by proxy; REP. MC GEE voted no by proxy. REPS. SMITH, MOLNAR and KOTTEL were not present for the vote and left no proxy votes.) **REP. ELLINGSON will carry SB 16.**

EXECUTIVE ACTION ON SB 32

Motion: **REP. WYATT moved SB 32 BE CONCURRED IN.**
{Tape: 1; Side: B; Approx. Time Count: 13.6}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 14.0}

Vote: The motion carried 14 - 3; REPS. BOHARSKI, MC GEE and CLARK voting no. (REP. AHNER voted aye by proxy; REP. MC GEE voted no by proxy. REPS. SMITH, MOLNAR and KOTTEL were not present for the vote and left no proxy votes.) **REP. ELLINGSON will carry SB 32.**

EXECUTIVE ACTION ON SB 54

Motion: **REP. WYATT moved SB 54 BE CONCURRED IN.**
{Tape: 1; Side: B; Approx. Time Count: 19.0}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 20.5 - 24.6}

Motion/Vote: **REP. BOHARSKI moved to amend by striking subsection 3 and inserting corresponding language from HB 540.** The motion carried 16 - 0. (REPS. AHNER, MC GEE, KOTTEL and MOLNAR were not present for the vote and left no proxy votes.)

Motion/Vote: **REP. HANSON moved SB 54 BE CONCURRED IN AS AMENDED.** The motion carried 16 - 0. (REPS. AHNER, MC GEE, KOTTEL and MOLNAR were not present for the vote and left no proxy votes.) **REP. MC CULLOCH will carry SB 54.**

EXECUTIVE ACTION ON SB 79

Motion: **REP. SANDS moved SB 79 BE CONCURRED IN.**
{Tape: 1; Side: B; Approx. Time Count: 28.2}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 28.8-31.5; Comments: REP. SANDS withdrew the motion pending further information.}